SIAH IK KOW v. PUBLIC PROSECUTOR

[A.Cr.J. (Chang Min Tat J.) October 3, 1968]
[Ipoh — Criminal Appeal No. 34 of 1968]

Road Traffic — Using car for carriage of goods without haulage permit — Such user without policy of insurance — Presumption — Road Traffic Ordinance, 1958, ss. 74, 98 and 144(a) — Evidence Ordinance, 1950, s. 114.

Criminal Law and Procedure — Charge — Ambiguous — Accused not misled — No failure of justice.

Evidence — Presumption — Evidence Ordinance, 1950, s. 114 and Road Traffic Ordinance, 1958.

Road Traffic — Disqualification — Special reasons relevant to the offence.

The appellant was originally charged on two charges — the first of using a motor car for the carriage of goods for trade without a haulage permit an offence punishable under section 98(1) of the Road Traffic Ordinance 1958 and the second of such user without a relevant policy of insurance, an offence under section 74 of the said Ordinance.

On appeal it was argued that the prosecution had not established a *prima facie* case which justified calling the defence. It was contended that despite the presence of a fairly large quantity of a single type of vegetable in the appellant's car, there was no evidence that the vegetable was carried for the purpose of a trade or business.

Held: (1) there was no reason why the presumption under section 144 for a prosecution of an offence under Part V of the Road Traffic Ordinance should not be raised. The presumption and the evidence on the record had not been rebutted and therefore the appeal should be dismissed;

(2) the disqualification of 6 months on the second charge should be set aside as the magistrate had not recorded any special reasons and the case was remitted to the magistrate to consider and find any special reasons relevant to the offence and not the offender and with a direction that in the absence of any special reasons, an order of disqualification for the mandatory period of 12 months be imposed.

Cases referred to:—

(1) *Mah Wah Yeow* v. *Public Prosecutor* [1961] M.L.J. 146.

(2) *Ch'ng Kok Tow* v. *Public Prosecutor* [1968] 1 M.L.J. 20 not followed.

CRIMINAL APPEAL.

R. C. M. Rayan for the appellant.

M. Mahalingam (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Chang Min Tat J.: This is an appeal against the convictions and sentences passed by the magistrate at Lumut on two charges, the first of using a motor car for the carriage of goods for trade without a haulage permit, an offence punishable under section 98(1) of the Road Traffic Ordinance 1958 and the second of such user without a relevant policy of insurance, an offence under section 74(1).

The second charge was expressed to be under:—

"Section 74(1) of the Motor Vehicle Third Party Risks, Road Traffic Ordinance 49 of 1958, and punishable under section 74(2) of the same Ordinance".

There is of course no section or rule 74(1) of the Motor Vehicles (Third Party Risks) Rules 1959 published under L.N. 169 of 1959. Clearly the offence alleged to be committed came under section 74(1) of the Road Traffic Ordinance and was punishable under section 74(2). No objection was taken to the charge either at the trial or at the appeal. In the circumstances of the case and in particular having regard to the fact that the appellant was not misled, the mistake had not occasioned any failure of justice and I now amend the second charge to bring it under section 74(1) and section 74(2) of the Road Traffic Ordinance.

The evidence led by the prosecution was that two police constables at the Telok Muroh junction stopped a Mazda motor car No. AH 4645 coming from Telok Muroh. The appellant was driving the car and in the seat next to him were two children, one a girl, the other a boy. One of the police constables testified that he saw on the back seat of the car 9 bundles of cucumber weighing 90 katties. He informed the appellant that he had committed the offence of carrying goods for sale without a haulage permit. He also demanded for the driving licence (*lesen pemandu*). The third party insurance policy was not produced. The other police constable gave substantially the same evidence. He also saw the 9 bundles of cucumber and he said they weighed 90 katties.

It would appear that the car was not detained but was released on the spot. The cucumber was similarly not detained. The two police constables then returned to the police station and there the first police constable made a report which was produced as an exhibit at the trial.

Now in the police report, the particulars of the appellant's driving licence were recorded and they disclosed that the residence of the appellant was No. 1 Stall Market Kampong Koh. No evidence however of such particulars was adduced from the police constable who made the report. In view of this I must hold that there was no evidence before the court of the residence of the appellant since it was not open to the prosecution to rely on the report to prove the matters referred to therein when it failed to adduce such evidence from the maker thereof by oral proof.

There was no other evidence.

On appeal it is now urged that the prosecution had not established a *prima facie* case which justified calling for the defence.

In his grounds of decision the trial magistrate found as a fact that the appellant was a stall-holder in Kampong Koh market and on this

and on the other evidence adduced by the prosecution held that there was a *prima facie* case for the defence to answer. I have already held that there was no evidence before the court that the appellant was such a stall-holder.

The question to be decided therefore is whether there was admissible evidence to support a *prima facie* case against the appellant. Two police officers had testified that they saw 9 bundles of cucumber on the back seat. Both said they weighed 90 katties. It would appear that they did not actually weigh the bundles and that the information of the weight of the cucumbers came from the appellant himself as in answer to a question from the appellant one of the police constables said *"Ia beri tahu saya mentimum itu 90 kati"*. In my view this evidence was admissible under section 27 of the Evidence Ordinance.

Despite the presence of a fairly large quantity of a single type of vegetable in the appellant's car, it is nevertheless argued on behalf of the appellant that there was no evidence that the cucumber was carried for the purpose of any trade or business. Two cases were cited. The first was *Mah Wah Yeow* v. *Public Prosecutor*.[1] In this case the car was found to be carrying 69 pineapples on the back seat and 4 rolls of window chicks. The first charge was laid under section 22(2) of the Road Traffic Ordinance 1958 for using a motor-car for a purpose other than for the purpose for which a licence was granted. Rigby J. held that there was no evidence that the goods were carried for purposes of any trade or business under section 2 of the Road Traffic Ordinance 1958 and accordingly quashed the conviction. The second case was *Ch'ng Kok Tow* v. *Public Prosecutor*.[2] In this second case the charges were as in the one under appeal under section 98(1) and section 74(1) & (2) of the Road Traffic Ordinance. The car was found to be carrying a fairly large quantity of vegetables and some marine products. Ali J. held that it was incumbent on the prosecution to prove not only that the car was used for the carriage of goods but that the goods carried were for purposes of trade or business, the learned judge disagreeing with the trial magistrate that mere quantity could establish or lead to a necessary inference that the goods were for purposes of trade or business.

My attention having been drawn to section 144(a) Road Traffic Ordinance:—

> "In any proceedings for an offence under Part V of this Ordinance, in so far as it may be necessary to establish the offence charged, it shall be presumed until the contrary is proved —
>
> (a) that any conveyance of persons or goods in a motor vehicle was for hire or reward;",

I invited learned counsel to address me on the effect of this statutory presumption. The invitation was declined. In my view, this presumption cannot be ignored, particularly where, as in this case, the offence under section 98(1) Road Traffic Ordinance was an offence in Part V of the Ordinance. In *Mah Wah Yeow's* case, the offence under section 22(2) Road Traffic Ordinance came under Part II of the Ordinance and clearly the presumption did not arise. I could only conjecture what the decision would be if the charge had been framed under section 98(1) Road Traffic Ordinance but as decided it is of no relevance for this appeal. The charge in *Ch'ng Kok Tow's* case was one under Part V but nowhere in the judgment of Ali J. was any mention made of the presumption under section 144(a) Road Traffic Ordinance. It would appear that it was never brought to his notice.

It is clear that without the aid of the presumption, the prosecution in the case under appeal must fail. There is however no reason which can readily spring to my mind why the presumption for a prosecution of an offence under Part V of the Road Traffic Ordinance should not be raised. Thus raised on the prosecution evidence, particularly in the absence of any want of good faith or of reasonableness on the part of the police, there was in my view a *prima facie* case raised against the appellant. One does not normally buy a quantity of 9 bundles of cucumber, which is a vegetable of little substance and not capable of long storage, at one time. In any event, it called for an explanation from the appellant.

When his evidence was called, the appellant gave evidence that he was that day on his way to a picnic with his 2 children and that what was on the back seat of the car was not 9 bundles of cucumber, which he now denied but foodstuffs for a picnic lunch — pineapples, bananas, noodles, aerated waters, cucumber and ubi sekuang. His son a boy of 10 gave evidence that his father carried pineapples but not cucumber. Suffice it to say that the two police constables were never examined on the presence of the alleged foodstuffs and that the learned magistrate disbelieved the defence and held it did not raise any doubt on the prosecution evidence. I am unable to see what other decision the learned magistrate could come to and I am of the view that the presumption had on the evidence on record not been rebutted.

The appeal is dismissed and the fines of $30 on each of the 2 charges are confirmed. They erred on the side of leniency but I see no reason for interfering with them. The learned magistrate had also ordered a disqualification for 6 months. He had however not recorded any special reasons or even any reasons whatsoever why he had departed from the otherwise mandatory minimum period of 12 months laid down by

section 74(2). The order for disqualification for 6 months is set aside and the case is remitted to the magistrate for him to consider and find any special reasons which must be relevant to the offence and not to the offender, with the direction that in the absence of any special reasons, he will order a disqualification for the statutory minimum period of 12 months.

Order accordingly.

Solicitors: *R. C. M. Rayan & Co.*

LIM HOCK SIEW & ORS. v. THE MINISTER OF THE INTERIOR & DEFENCE

[O.C.J. (Wee Chong Jin C.J.) November 17, 1967]
[Singapore — Habeas Corpus No. 2 of 1967]

Habeas Corpus — Illegal detention — Discretion to detain vested in the President — Direction under s. 8(1A) to continue detention of a person must be made by President — How exercise of power is to be signified — Internal Security Act, 1960, s. 8(1) and (1A) — Interpretation Act, 1965, s. 34.

Administrative Law — Detention under Internal Security Act, 1960 — Order of, after expiry of period — Exercise of power by President — How signified.

This was an application by six persons who were being detained under the Internal Security Act, 1960 for a writ of *habeas corpus*. The applicants alleged that their detention was illegal or improper. The applicants had been originally detained under the Preservation of Public Security Ordnance, 1955, and subsequently the orders of detention were purported to be extended by direction orders issued under section 8(1A) of the Internal Security Act. The orders were signed by the Permanent Secretary to the Ministry of the Interior and Defence and recited that "the Minister hereby directs" the person named to be detained for a further period of two years.

Held, granting the application: (1) under section 8(1A) of the Internal Security Act, the power to continue the detention of a person detained under an order of detention after the expiry of the period of detention is vested in the President and only the President can direct that the period of the order of detention be extended;

(2) the President can signify the exercise of his power either personally or in accordance with section 34 of the Interpretation Act under the hand of a Minister or of the Secretary to the Cabinet;

(3) the five orders or directions in this application were *ex facie* not made under the hand of the President nor were they in compliance with section 34 of the Interpretation Act and therefore they were *ex facie* defective orders and unlawful;

(4) as the orders were defective they do not provide legal justification for the detention of the applicants and an order must be made for their discharge.

Case referred to:—

(1) *Greene* v. *Secretary of State for Home Affairs* [1941] 3 All E.R. 388.

HABEAS CORPUS.

T. T. Rajah for the applicants.

Tan Teow Yeow (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Wee Chong Jin C.J.: This is a joint application by six persons, who are being detained under the Internal Security Act, 1960, for a writ of *habeas corpus*. They allege that their detention is illegal or improper.

The affidavits filed in these proceedings disclose the following undisputed facts. The first applicant, Lim Hock Siew, a medical practitioner, was arrested on the 2nd February 1963. At the time of his arrest he was a Central Executive Committee member of the Barisan Sosialis, a political party. On the 16th February 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955, the detention order being for a period of one year from the 16th February 1963. The period of his detention was extended for a further period of twelve months by an order made on 1st February 1964 under section 3(1)(b) of the same Ordinance. On the 1st February 1965 the Minister of Interior of Malaysia made an order under section 8(1)(a) of the Internal Security Act, 1960, directing that he be detained for a period of two years. On the 1st February 1967, the Minister of the Interior and Defence of the Republic of Singapore made an order under section 8(1A) of the Internal Security Act, 1960, directing that he be detained for a further period of two years and this order was signed by the Permanent Secretary of that Ministry. He is presently being detained under the order of the 1st February 1967.

The second applicant, A. Mahadeva, was also arrested on the 2nd February 1963. At the time of his arrest he was a journalist and was the General Secretary of the Singapore Journalists Union. On the 16th February 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955, the detention order being for a period of one year from the 16th February 1963. He remained in continuous detention under orders made similar to those made in the case of the first applicant and is presently being detained under an order dated 18th February 1967 made by the Minister of the Interior and Defence under section 8(1A) of the Internal Security Act, 1960, and signed by the Permanent Secretary of that Ministry.

The third applicant, Ho Piao, a trade unionist, was also arrested on the 2nd February 1963. At the time of his arrest he was the General Secretary of the now banned Singapore National Seamen's Union. On the 16th February 1963 he was detained in custody under a detention order made under section 3(1) of the Preservation of Public Security Ordinance, 1955